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VIA ECF AND FAX (631-712-5677)

Hon. Joseph F. Bianco
United States District Court
Eastern District of New York
100 Federal Plaza
P.O. Box 9014
Central Islip, NY 11722-9014

Re: *FragranceNet.com, Inc. v. FragranceX.com, Inc.*, CV-06-2225

Dear Judge Bianco:

We represent FragranceNet.com, Inc. and ask that the Court certify the June 12, 2007 Order denying plaintiff's motion to file its third amended complaint (the "Order") as appropriate for immediate appeal pursuant to 28 U.S.C. § 1292(b).

The Order meets the criteria for appealability in that it involves a controlling question of law as to which there is substantial ground for difference of opinion and an immediate appeal therefrom will materially advance the ultimate termination of the litigation.

The Court of Appeals for the Second Circuit never has directly confronted, and expressly has left unanswered, the question of whether a defendant's use of a plaintiff's trademark as a keyword or as a Web site metatag gives rise to a claim for trademark infringement. In *1-800 Contacts, Inc. v. WhenU.com*, 414 F.3d 400 (2d Cir. 2005), the case principally relied on in the Order and by other district courts in this circuit when addressing the issue, the Second Circuit was presented with a distinctly different question. The question before the Second Circuit was whether 1-800's trademark was infringed in violation of the Lanham Act where the defendant caused pop-up ads of 1-800's competitors to appear on the desktops of computer users who downloaded the defendant's software when those computer users accessed 1-800's Web site. The pop-up ads were not tied to the plaintiff's trademark.

Because this is a developing area of law and the breadth of authority nationwide is contrary to the Order, this issue should be given its due consideration early in the case. Absent an immediate appeal from the Order, the parties and this Court run the risk of

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litigating the existing claims and the proposed claims sequentially instead of simultaneously, thereby wasting the parties' financial resources as well as the Court's. The most efficient and economical way to resolve all issues is to certify the Order for immediate interlocutory appeal.

Respectfully submitted,

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RLS/lr
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